IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

STEPHEN C. LEONARD and JOHN O. BAKER,	
Plaintiffs,	**No. 01-CV04026-DEO**
vs.	**ORDER**
BARBARA KUHNES, et al.,	
Defendants.	

In this lawsuit, pursuant to 42 U.S.C. § 1983, plaintiff Stephen C. Leonard claims that Cherokee County police officers deprived him of his right to be free from the use of excessive force, as set forth in the Fourth and Fourteenth Amendments to the United States Constitution, when they arrested him on October 13, 2000. He further claims that defendants[1] acted with deliberate indifference to his medical needs by removing his shoes, including an orthopedic shoe, at the time of his arrest and not providing him with a replacement orthopedic shoe.[2] Defendants deny the allegations and affirmatively assert the

[1] "Defendants" in this order refers only to Officer Tom Messerole and Officer Rod Fitzgerald who have filed the motion for summary judgment, Docket No. 30. Sergeant Paul Nabb, who was a party to the motion for summary judgment, has been dismissed as a defendant in this case. *See* Court's Order of April 3, 2002, Docket No. 55.

[2] The plaintiff's left shoe is an orthopedic shoe with a 1 1/4 inch buildup. *See* Plaintiff's Complaint at 3. Both plaintiff's right and left shoes were held as evidence.

defense of qualified immunity.

Presently before this Court is defendants Messerole and Fitzgerald's motion for summary judgment in which defendants argue that all of plaintiff's claims are barred by the doctrine of qualified immunity. For the reasons discussed herein, defendants Messerole and Fitzgerald's motion (Docket No. 30) is granted as to the claim of deliberate indifference to medical needs and denied as to the claim of excessive force. Furthermore, because the plaintiff is no longer incarcerated at the Cherokee County Jail, his pro se motion for immediate injunctive relief, Docket No. 38, is denied as moot.

I. FACTUAL BACKGROUND

At about 11:06pm on October 13, 2000, Officer Tom Messerole and Officer Rod Fitzgerald of the Cherokee County Police Department, were dispatched to 421 S. 9th Street to respond to a stabbing. When the officers arrived at the scene, Marcella Cline was standing in her yard and told officers that Stephen Leonard had stabbed her son David Cline several times, that Mr. Cline had ran off and that Mr. Leonard had chased him into the wooded area to the west of the house. At approximately 11:14pm Mr. Cline walked back to the house. He had several cuts to his right arm and a cut on the back of his head. At about this time, Sergeant Paul Naab arrived at the scene. Sergeant Naab proceeded to take statements from the victim and his mother. Officers Messerole and Fitzgerald proceeded to Karen Sergeant's house at 616 W. Locust where Mr. Leonard had been located. Police officers were covering the front and back of the house.

It is at this point that the parties' versions as to what happened radically differ.

Defendants contend that Mr. Leonard exited the back of the house yelling profanities and taunting the officers. Mr. Leonard was ordered to walk toward the lighted area but he did not follow the orders. Officer Fitzgerald and Deputy McDonald[3] moved toward Mr. Leonard to arrest him, not knowing if Mr. Leonard was still armed. Deputy McDonald grabbed Mr. Leonard from behind. Deputy McDonald took one arm and Officer Fitzgerald took the other arm. The defendants claim that Mr. Leonard was struggling and resisting arrest. He was therefore brought to the ground, face down, and was handcuffed and shackled. Officers Messerole and Fitzgerald transported Mr. Leonard to the jail where he was booked. After complaining of pain in his left hip and left elbow, Mr. Leonard was taken to the hospital in an ambulance to be examined. He was released from the hospital and was then taken back to the jail. Later, he was charged with attempted murder.

Mr. Leonard vigorously disputes the facts surrounding his arrest as set forth by the defendants. He denies the claim that he was using profanity or resisting arrest. He further states that the officers did not identify themselves as police officers or inform him as to why he was being arrested, in compliance with Iowa law which requires that "[t]he person making the arrest must inform the person to be arrested of the intention to

[3]Deputy McDonald is not a party to the motion for summary judgment.

arrest the person, the reason for the arrest, and that the person making the arrest is a peace officer..." Iowa Code § 804.14.

II. STANDARD FOR SUMMARY JUDGMENT

A motion for summary judgment may be granted if, after examining all of the evidence in the light most favorable to the nonmoving party, the Court finds that no genuine issues of material fact exist and that the nonmoving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986); Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Montgomery v. John Deere & Co., 169 F.3d 556, 559 (8th Cir. 1999). A fact is material if it might affect the outcome of the suit under the governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). An issue of material fact is genuine "if it has a real basis in the record." Hartnagel v. Norman, 953 F.2d 394, 395 (8th Cir. 1992)(citing Matsushita, 475 U.S. at 586-87).

With this standard in mind, the Court turns to consideration of defendants' motion for summary judgment.

III. ANALYSIS

A. QUALIFIED IMMUNITY

Under the qualified immunity doctrine, "state actors are protected from civil liability when 'their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Sexton v. Martin, 210 F.3d 905, 909 (8th Cir. 2000), quoting Harlow v.

Fitzgerald, 457 U.S. 800, 818 (1982); McCaslin v. Wilkins, 183 F.3d 775, 778 (8th Cir. 1999). An analysis of qualified immunity is a two step process. First, the Court must ask, "[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" Saucier v. Katz, 533 U.S. 194, 201 (2001). Second, if a violation can be made out, the next step is to "ask whether the right was clearly established." Id. "For a right to be clearly established, the 'contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.'" Buckley v. Rogerson, 133 F.3d 1125, 1128 (8th Cir. 1998), quoting Anderson v. Creighton, 483 U.S. 635, 640 (1987).

"[T]here is no doubt that Graham v. Connor, [490 U.S. 386 (1989)], clearly establishes the general proposition that use of force is contrary to the Fourth Amendment if it is excessive under the objective standards of reasonableness." Saucier, 533 U.S. at 201-202; see also Winters v. Adams, 254 F.3d 758, 765 (8th Cir. 2001). In Winters, the Eighth Circuit summarized the applicable inquiry for determining whether, in a particular case, a Fourth Amendment violation has been established:

> '[T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.' [Graham, 490 U.S.] at 397. 'The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - - in

> circumstances that are tense, uncertain, and rapidly evolving - - about the amount of force that is necessary in a particular situation.' Id. at 396-97. In making an assessment of objective reasonableness, the Supreme Court stated that certain factors should be balanced, 'including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.' Id. at 396.

Winters, 254 F.3d at 765.

Even if the plaintiff can establish a constitutional violation by excessive force, under step two of the qualified immunity inquiry, an officer may still be shielded from suit if his conduct was "objectively legally reasonable" in light of the information he possessed at the time of the alleged violation. Harlow v. Fitzgerald, 457 U.S. 800, 819 (1982). Thus, "[q]ualified immunity operates...to protect officers from the sometimes 'hazy border between excessive force and acceptable force,' and to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful." Saucier, 533 U.S. at 206 (internal citations omitted). Therefore, "'[d]efendants will not be immune if, on an objective basis, it is obvious that no reasonably competent officer would have concluded' that the defendant should have taken the disputed action." Winters, 254 F.3d at 766 (quoting Malley v. Briggs, 475 U.S. 335, 341 (1986)).

Applying these principles to the case at bar, this Court is persuaded that defendants motion for summary judgment cannot be

granted at this time. As to the first step of the qualified immunity analysis, the plaintiff rightfully aruges that Graham v. Connor (490 U.S. 386 (1989)) clearly establishes that the use of force is a violation of the Fourth Amendment if it is excessive under the objective standards of reasonableness. Therefore, the plaintiff has satisfied the first step in the qualified immunity analysis.

Turning to the second step in the qualified immunity analysis, the Court, as stated above, must ask "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." Saucier, 533 U.S. at 202, (citing Wilson v. Layne, 526 U.S. 603, 615 (1999). Under the plaintiff's version of what happened, the plaintiff came out of the house when the police arrived, he did not yell profanities or taunt the officers, and he did not resist arrest. The police officers attacked him from behind, twisting his arms and slamming him face down to the ground, causing him hurt his left hip and left elbow. It is undisputed that the plaintiff was taken to the hospital in an ambulance because he said he could not walk, and while there he was examined and x-rayed. Construing the facts in the light most favorable to the plaintiff, (Matthews v. Trilogy Communications, Inc., 143 F.3d 1160, 1163 (8th Cir. 1998)), and assuming the officers forcefully twisted the plaintiff's arms and "slammed" him to the ground causing injury to his hip and elbow, the officers' use of force was not objectively reasonable.

The Court recognizes that if the officers' version of what

happened is true (i.e. the plaintiff was uncooperative, he was threatening and cursing the officers and he was possibly armed with a knife), then, under step two of the qualified immunity analysis, it would be clear to a reasonable officer that his conduct was not unlawful in such a situation. This Court must, however, for purposes of ruling on a summary judgment motion, accept the plaintiff's version of what happened. The Court is aware that the plaintiff could have been laying the groundwork for a lawsuit from the very beginning by conjuring up an inaccurate description of what happened and by faking his hip and elbow injury from the very moment he knew he was about to be apprehended. This Court, however, cannot assume that that is the case and must not decide this motion for summary judgment based on the credibility of the plaintiff or the defendants. "The court is not finally deciding whether plaintiff or defendants will probably prevail on the issue of qualified immunity. The court assesses credibility in a trial and does not assess credibility on a summary judgment record like this." Ribbey v. Cox, 222 F.3d 1040, 1042 (8th Cir. 2000). Further, as the Supreme Court has stated, "*Graham* does not always give a clear answer as to whether a particular application of force will be deemed excessive by the courts." Saucier, 533 U.S. at 205. Not all excessive force claims will be alike and the Court must evaluate each situation on a case by case basis. Here, what exactly happened when the plaintiff was arrested is a genuine fact question.

In light of the fact that there are disputed material facts

that prevent the Court from finding that the officers' actions were objectively reasonable under the specific circumstances they confronted, the Court cannot grant defendants' motion for summary judgment on qualified immunity grounds. *See* Arnott v. Mataya, 995 F.2d 121, 124 (8th Cir. 1993)(stating that summary judgment based on qualified immunity is inappropriate "[i]f the arrestee challenges the officer's description of the facts and presents a factual account where a reasonable officer would not be justified in making an arrest").

B. DELIBERATE INDIFFERENCE TO MEDICAL NEEDS

As stated before, at the time of plaintiff's arrest, his shoes, including his left orthopedic shoe, were taken from him and held as evidence because they allegedly contained blood from the victim of the alleged crime. The plaintiff claims that the failure to provide him with a replacement orthopedic shoe for his left foot rises to a level of deliberate indifference to serious medical needs.

It has become clear to this Court from the evidence that the defendants (Officers Messerole and Fitzgerald) were not involved in the taking of the plaintiff's orthopedic shoe. Sergeant Paul Naab, after conferring with Officer Steve Shuck and County Attorney Mark Cozine, *was* involved in the taking of plaintiff's shoes for evidentiary purposes. *See* Affidavit of Sgt. Paul Naab at 2. However, as stated before, Sergeant Naab was dismissed as a defendant in this case. *See* Note 1, supra. Therefore, as to the claim of deliberate indifference to serious medical needs,

summary judgment in favor of defendants Messerole and Fitzgerald is appropriate.

IV. PRO SE MOTION FOR INJUNCTIVE RELIEF

Also pending before this Court is plaintiff's pro se motion for injunctive relief, docket number 38. In this motion, the plaintiff claims that while he was incarcerated at the Cherokee County Jail, his constitutional rights were violated because he was denied the use of a decent sized pencil to write with and was restricted to the use of a pencil to one hour a day.

The plaintiff is no longer incarcerated at the Cherokee County Jail. Therefore, plaintiff's motion for injunctive relief is denied as moot.

V. CONCLUSION

IT IS HEREBY ORDERED that defendants Messerole and Fitzgerald's motion for summary judgment, Docket No. 30, is **granted** as to the claim of deliberate indifference to medical needs and **denied** as to the claim of excessive force.

IT IS FURTHER HEREBY ORDERED that plaintiff's pro se motion for injunctive relief, Docket No. 38, is denied as moot.

THEREFORE, in light of the Court's order dated April 3, 2002, Docket No. 55, the following people are no longer defendants in this case: Barbara Kuhnes, David Scott, David Otto, Chuck Stubbe, Lisa Kenny and Paul Naab. The following people remain as defendants in this case: Tom Messerole, Rod Fitzgerald and Michael McDonald.

IT IS SO ORDERED.

DATED this ___ day of April, 2002.

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Donald E. O'Brien, Senior Judge
United States District Court
Northern District of Iowa